IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10854 of 2000

with

SPECIAL CIVIL APPLICATION No 11552 of 2000

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JK CORPORATION LTD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10854 of 2000
MR RD PATHAK for Petitioner No. 1-2
MR SN SHELAT, ADVOCATE GENERAL WITH
MS HARSHA DEVANI for Respondent-State

2. Special Civil Application No. 11552 of 2000
MR KH KAJI for Petitioner
MR SN SHELAT, ADVOCATE GENERAL WITH

MS HARSHA DEVANI for Respondent-State

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE
and
MR.JUSTICE P.B.MAJMUDAR

Date of decision: 20/07/2001

C.A.V JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

#. The petitioners are carrying on business of sale and purchase of cement and are dealers registered under the provisions of the Gujarat Sales Tax Act, 1969, and Gujarat Sales Tax Rules, 1970, framed thereunder (hereinafter referred to as `the Act' and `the Rules').

#. By these petitions under Article 226 of the Constitution of India, prayer is made for grant of declaration that provisions of Section 59AAA of the Act, Rule 62AAA of the Rules with Forms 45C and 45D and circulars of the department of Sales Tax dated 12.9.2000 and 11.10.2000 are ultra vires being violative of Articles 14, 19(1)(g), 301, 303 and 304 of the Constitution of India.

#. These cases were heard earlier by the Division Bench. But in the course of hearing, on behalf of the State, for supporting the impugned provisions of the Act and the Rules, reliance was placed on the decision of the Supreme Court in the case of Tripura Goods Transport Association and another vs. Commissioner of Taxes and others, 1999(112) STC 609. Contention advanced by the learned Advocate General for the State is that Division Bench decision of this Court in the case of J.K.Corporation Limited vs. State of Gujarat, 1995(99) STC 226 needs reconsideration in view of the decision of the Supreme Court in Tripura Goods Transport Association case (supra). The present cases have, therefore, been placed before this Full Bench.

#. The impugned provision of Section 59AAA reads as under:

"59AAA. Power to declare specified goods.

(1) Where the State Government is of opinion that tax is or is likely to be evaded on sales or purchases of goods which take

place in the State subsequent to their import from other State and that with a view to preventing such evasion, it is necessary so to do, it may by notification in the Official Gazette, specify such goods (hereinafter referred to as "the specified goods".

(2) A registered dealer or any other person who intends to import specified goods from any other State for sale, use, consumption or any other disposal in the State, shall make a declaration in such form as may be prescribed and shall cause it to be carried with the specified goods, along with the documents to be carried under sub section (3) of Section 59A.

(3) On receipt of specified goods imported from other State, the registered dealer shall furnish statement in such form, to such authority and within such time, as may be prescribed."

As is apparent from the contents of provision of Section 59AAA, State Government is thereby empowered to specify goods by a notification regarding which there is evasion or likely evasion of tax on sales and purchases in the course of import of such goods. Sub-section (1) of Section 59AAA empowers the State Government to specify goods imported in the State of Gujarat on which there is likelihood of evasion of sales tax. Sub-section (2) of Section 59AAA obliges a registered dealer importing specified goods to make declaration in the prescribed form so that the same can be carried with the documents by the transporter as required by the provision of Section 59A applicable to the transporter. Sub-section (3) of Section 59AAA requires importer of specified goods to furnish statement in the prescribed form. Section 59A imposes an obligation on the transporter while importing goods to carry with him, all relevant documents and information regarding consignor or consignee of the goods and details/ particulars of the goods. The said documents and particulars are to be verified at the sales tax check post or barrier set up by the Sales Tax Department.

#. By notification dated 5.8.2000 in exercise of powers under sub-section (2) of Section 59AAA of the Act, the State Government, amongst other 16 articles mentioned in

the notification, specified `cement' as specified goods for which declaration and information in the specified form is to be supplied while importing the said goods. To fulfil the object and to ensure compliance of provision of Section 59AAA of the Act, Rule 62AAA was introduced in the Rules with effect from 5.8.2000. Said Rule 62AAA reads as under:

"62AAA. Declaration under Section 59AAA.

(1) Where a registered dealer or any other person (hereinafter referred to as "the importer") --

(a) imports any specified goods specified under sub-section (1) of Section 59AAA within the State of Gujarat -

(i) for sale

(ii) for use in the manufacture or processing of goods for sale, or

(iii) for use in mining or for generating or distributing the electricity or any other form of power, or

(iv) for use in packing of goods for sale, or

(v) for sale by way of execution of works contract; or

(b) receives any goods consigned to him from outside the State for any of the purposes mentioned in sub clauses (i) to (v) of clause (a) shall make a declaration in form 45C. The counterfoil of the declaration shall be retained by the importer and its portions marked `original' and `duplicate' shall be produced before the officer in charge of the entry check post who shall retain the `original' portion and return the `duplicate' portion duly sealed and signed in token of having verified it to the person producing it and such officer shall send the retained `original' portion of Form 45C to the Sales Tax Officer concerned.

(2) The registered dealer shall submit a

statement of import of specified goods in Form 45C along with the `duplicate' portion of Form 45C to the Assessing Officer within fifteen days from the last day of the month.

(3) Form 45C may be obtained by the importer from the Sales Tax officer having jurisdiction over the area within which the registered dealer carries on his business or in case of any other person who imports the specified goods ordinarily resides. The Forms shall be available in a book of 25 Forms and a fee of rupees twenty five (in court fee stamp) shall be charged for every such book.

(4) The provision of the said sub rules (3) to (12) of Rule 24A and clauses (c) and (f) of Rule 24B shall apply mutatis mutandis to the declaration in Form 45C.

(5) The authority obtaining the Form 45C may refuse to issue such Form to an importer who has failed to comply with the conditions prescribed in clauses (a), (c) and (f) of Rule 24B."

From the reading of clauses (a) and (b) of sub rule (1), the requirement to be fulfilled on the part of dealer importing goods is that if goods are brought in the State of Gujarat for sale or use in mining or for generating electricity or for packing of goods for sale or for executing works contract, the importer should make a declaration in the prescribed Form 45C. The counterfoil of the declaration so made shall be returned by the importer and its portions marked `original' and `duplicate' shall be produced before the officer in charge of the entry check post who shall retain `original' portion and return `duplicate' portion duly sealed and signed in token of having verified it, to the person producing it and such officer shall send the retained original portion with Form 45C to the Sales Tax Department concerned. Sub-rule (2) of Rule 62AAA requires the registered dealer importing the specified goods to submit a statement of import in the prescribed Form 45D along with duplicate portion of Form 45C to the assessing officer within fifteen days of the last date of the month. Sub-rule (3) of the said Rule enables the registered dealer to obtain Form 45C from the Sales Tax

Officer in a book of 25 Forms on requisite payment. Sub-rule (4) makes applicable sub-rules (3) to (12) of Rule 24A and clauses (c) and (f) of Rule 24B mutatis mutandis to the declaration in Form 45C to be given by the importer. Since the Rule and various requirements to be fulfilled in the prescribed form are under challenge, it is also necessary to reproduce contents of form 45C prescribed under Rule 62AAA(1) of the Rules:

FORM 45C

(see Rule 62AAA (1))

Declaration by a registered dealer or any other person importing specified goods for sale etc.

(Counterfoil/ duplicate/ original)

Book No.: Sr.No.:___ Date of issue: __

Name of the office of issue Seal of issuing authority

To,

The officer in charge of the Check Post or barrier

Declared and certified that the goods particulars of which are given below have been imported by me/us or have been consigned to me/us from outside the State for sale or for use in manufacture of processing of goods for sale or for use in the mining or generation or distribution of electricity or any other form or power or packing of goods or for sale by way of execution of works contract and hold myself/ ourselves liable for payment of tax, as per Gujarat Sales Tax Act, 1969 to the Government, on the sale thereof.

(1) (a) Name and complete address of the State consignor;

(b) A certificate or registration No. of the consignor;

[1] under the Sales Tax Act .... (mention the name of the State) Sales Tax Act.

[2] under the Central Sales Tax Act, 1956.

(2) Name of transaction --

(a) Consignment
(b) Depot transfer
(c) Inter State sale/ purchase
(d) Any other nature

(3) (a) Name and complete address of the consignee

(b) A certificate of registration No. of the consignee;

(i) Under the Gujarat Sales Tax Act, 1969 ...
(ii) Under the Central Sales Tax Act, 1956 ...

(4) (a) Name and complete address of the agent/ person/ broker through whom the order is booked

(b) A certificate of registration No. of such agent/ person etc.

(i) under the Sales Tax Act .... (mention the name of the State)

(ii) under the Central Sales Tax Act, 1956 ...

(5) Copy of the order so placed is attached.

(6) Complete address including the name of District and State from which the goods are despatched.

(7) Complete address of the designation including the name of Taluka and District of the State to which the goods are despatched.

(8) Description of goods.

(9) Quantity of packages and weight of the goods.

(10) Price/ estimated value of goods (in rupees).

(11) Consignor's invoice No. / Challan No.... and date ......

(12) Details of the transport:

(i) name and full address of the carrier (transporting company or owner of the vehicle)

(ii) registration No. of the vehicle.

I, ..., proprietor/ partner/ director/ Karta/ Manager/ Secretary of M/s. ..... hereby declare that the facts stated above are true to the best of my knowledge and belief and nothing has been concealed.

Signature and status of the person signing the declaration,

Seal of the consignee or of the dealer with GST/ CST Nos."

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At this stage, it is necessary to point out that present Form 45C was substituted by notification dated 5.8.2000 for the original Form 45C which was struck down and declared ultra vires by the Division Bench of this Court in the case of J.K.Corporation Limited (supra).

#. The main ground of challenge to the provisions of Section 59AAA of the Act and Rule 62AAA of the Rules is that compulsion imposed by the above provisions on the importer to furnish all information about import of goods and make declaration before the entry of goods at the check post are formalities impossible of performance in the facts situation obtaining in the course of day to day business of import and sale of cement. These provisions impose unreasonable restriction on the fundamental right of the petitioner to carry on trade and they restrict freedom of inter-State trade and commerce guaranteed under Article 301 of the Constitution of India. It is also contended that imposing by law such obligation on the importer along with transporter to furnish all information regarding `specified goods' imported and make declaration before the entry of goods at the check post is beyond the legislative power of the State. The goods imported from outside State in the State of Gujarat cannot be subjected to sales tax under the provisions of the Gujarat Sales Tax Act. If at all they are to be subjected to Central Sales Tax under the Central Sales Tax Act, the taxing authorities would be those in concerned States from where the goods are exported. Learned senior counsel Mr.R.D.Pathak and Mr.K.H.Kaji appearing in the present two cases for the petitioners contend that similar provisions and Form 45C were struck down by this Court in the case of J.K.Corporation Limited (supra) after rejecting the stand of the State Government that such provisions are necessary to check and prevent

evasion of sales tax on `specified goods' imported in the State. The submission made is that there is clearly an attempt on the part of the State Legislature to reintroduce similar provisions with same obligation on the importer. It is an attempt to nullify the verdict of this Court pronounced in the case of J.K.Corporation Limited (supra).

#. On behalf of the petitioners, serious objection is taken to certain provisions of Rule 62AAA read with Rule 24B of the rules and to the information required by columns (6) to (12) of the prescribed Form 45C, the details of which shall hereafter be discussed.

#. It is pointed out that clause (b) of sub-rule (1) of Rule 62A imposes a compulsory obligation on the importer or consignor of goods to make a declaration in Form 45C at the time of entry of the goods at the check post. It is submitted that information required to be filled in prescribed Form 45C in columns (6) to (12) may not always be available and can be obtained with utmost difficulty and expense by the importer before entry of the goods. Columns (6) to (12) of Form 45C require the particulars to be filled in by the importer before entry of the goods and he has to supply information at the check post. With regard to column (6), it is stated that after placing orders for the goods, it may not be possible for the importer within the State to know complete address including the name of District and State from where the goods are despatched because it is left to the consignor or exporter of the goods to choose the place or places from where to despatch the goods and in which quantity as per the order placed. Similarly, serious objection is taken to requirement of filling column (11) of the Form to supply information as to consignor's invoice number/ Challan number and date. It is submitted that supplying such information as required under column (11) may not be practically feasible because the importer is not available personally nor he can be forced to make himself available through any of the authorized agents at the entry check post to supply consignor's invoice number, Challan number and date of Challan. The above obligation is also extremely unreasonable and impractical. Same objection is raised with regard to column (12) in the said Form which requires the importer to give information of name and full address of the carrier (transporting company or owner of the vehicle) and registration number of his vehicle. It is submitted that this information at the time of export is available only with exporter or consignor and the transporter. The transporter is separately required in accordance with Rule 62A to

furnish separate declaration in prescribed Form 45A.

#. On behalf of the petitioners, serious objection is also raised to clause (f) of Rule 24B of the Rules which, interalia, lays down condition to be fulfilled for obtaining prescribed Forms from the registering authority. Clause (f) of Rule 24B reads as follows:

> "The applicant should further satisfy the registering authority that purchase made on the strength of the respective certificate have been accounted properly in regular books of accounts and resales of the goods purchased or sales of manufactured goods out of the goods purchased on the strength of such certificates are also accounted properly in regular books of accounts and resales of the goods purchased or sales of manufactured goods out of the goods purchased on the strength of such certificates are also accounted properly in regular books of account and tax due and payable as per the provisions for these purchase, sales and resale has been fully paid within the prescribed time limit."

A perusal of clause (f) of Rule 24B shows that before issuance of the Form, registering authority has to satisfy himself that purchases made earlier on the strength of the certificates have been accounted properly in the regular books of account and resales of the goods purchased or sales of manufactured goods out of the goods purchased on the strength of such certificate are also accounted for in the regular books of account and tax due and payable as per the provisions for these purchases, sales and resales has been duly paid within the prescribed time limit. Learned counsel for the petitioners contend that at the time of importing of goods and for that purpose for obtaining book containing prescribed Forms, the requirement that registering authority shall be given all books of account and documents in proof of payment of tax dues is an impossible task. Cases of registered dealers and importers can be envisaged where returns for sales tax are filed and assessments have not been made, tax due is worked out but payment remains because there are appeals. There are many other impediments making it impossible for the importer at the time of entry of goods to satisfy the authority that all books of account are properly maintained and all sales tax dues for his past transactions have been duly paid. The contention advanced is that imposing such obligations even for issuance of books containing prescribed forms is an

attempt on the part of the Sales Tax Department to impede free flow of inter State trade and commerce in cement. Such impossible formalities are deliberately laid down only to benefit local manufacturers of cement in the State of Gujarat and to discourage import of cement to State of Gujarat from outside. Such legal course, it is argued, is in contravention of Constitutional provisions under Article 301 of the Constitution and beyond the legislative competence of the State Government.

##. Mr.S.N.Shelat, learned Advocate General appearing for the State heavily relies on the decision of the Supreme Court in Tripura Goods Transport Association (supra). On behalf of the State, he submits that power of the State Legislature to levy sales tax under Entry 54, List II of the State List extends to making of all necessary subsidiary and ancillary provisions for preventing and checking evasion of tax. He submitted that experience of the Department was that because of price variation of cement manufactured within the State and outside State, large scale illicit trade in cement by importers was going on. Such unaccounted cement imported in the State was clandestinely sold, used and consumed within the State without source of identification of such imported goods with the Department. The provisions introduced in the Act, rules and Forms by amendment is with the purpose to identify consignees, consignors and transporters of goods to subject imported articles to leviable tax within the State or in the State from which goods are exported. It is submitted that legal flaw or want of source of power in the Act, which was noticed by the Division Bench in the case of J.K.Corporation Limited (supra) has been removed by incorporating specific provision of Section 59AAA in the Gujarat Act which is legally permissible course for the State Legislature. The amended provisions of the Act and the Rules with the Form prescribed thereunder now do not suffer from any constitutional or legal infirmity and the provisions have benevolent purpose of checking and preventing evasion of tax by identifying consignees, consignors and transporters of imported specified goods.

##. In answer to the challenge to the provisions based on Article 301 of the Constitution of India that they unreasonably impede free flow of inter State trade and commerce, on behalf of the State, it is submitted that provisions which are regulatory in nature intended to check tax evasion can never be construed as creating direct impediment on the free flow of inter State trade and commerce. If at all there are some difficult formalities laid down as precondition for import or there

is some indirect or inconsequential impediment created in the inter State trade and commerce it is permissible as `reasonable restriction' under Article 301, 303 and 304 of the Constitution. Such reasonable restriction can be imposed by law on inter State trade and commerce. Reliance is placed on:

(1) M/s.Sodhi Transport Co. and anr. v. State of U.P. and anr. - AIR 1986 SC 1099

(2) State of Bihar and ors. v. Harihar Prasad Debuka - AIR 1989 SC 1119

(3) Amrit Banaspati Co. Ltd. v. Union of India and ors. - AIR 1995 SC 1340

(4) Tripura Goods Transport Association and anr. v. Commissioner of Taxes and ors. - AIR 1999 SC 719

##. Finally, learned Advocate General, with regard to certain particulars and information required in the prescribed form which, to some extent, are highly burdensome and difficult to be fulfilled, very fairly stated that, if necessary, this Court can read down certain provisions of the Rules and requirement of the Form to make them more reasonable. The State Government will have no objection if this Court, instead of striking down the Rules, read them down to make them more flexible, reasonable and practicable. It is further submitted that provision contained in Section 59AAA is not charging section. So also, provisions of rule 62AAA and the Forms prescribed are merely machinery provisions to check evasion of tax. Provisions regulate import of goods so that they reach their destination and the object of the provisions is to identify genuine importer. There is no intention to control or impose any restriction on the movement of goods. Requirement on the part of the importer to furnish information in the prescribed form and make declaration is not a restrictive measure. Details and information are necessary to identify importer. Necessary information and declarations are to be furnished and handed over at the check post. It would facilitate import. Similar requirement is already there to be fulfilled on the part of transporter as required by Rule 62A and Form 45A. Such requirement of giving similar information and declarations is to be found in Sales Tax laws in many other State like Rajasthan, Uttar Pradesh and Tripura. The Supreme Court in the case of Tripura Goods Transport Association (supra) upheld such provisions, rules and Forms as are made applicable to transporter. When such provisions are made applicable to

actual importer, there is greater reason for the Court to uphold the same because liability to pay tax is on the exporter or importer and not on the transporter. If transporter is held liable to give information and make declaration at the check post at the time of import of goods, more so, such liability can validly be imposed on the exporter or importer. There is, therefore, no illegality or constitutional infirmity in any of the provisions, rules or Forms.

##. We have considered various submissions made by the learned counsel for the petitioners and the learned Advocate General for the State. We do not find any constitutional infirmity in the impugned provisions of the Act, Rules and the Forms prescribed thereunder. Series of decisions cited at the Bar, latest of which is Tripura Goods Transport Association (supra), reiterate the legal position that the legislative entries in VIIth Schedule of the Constitution are not mere subjects but fields of the Legislation. They are to be given widest amplitude by construing them to extend to all ancillary and subsidiary matters which can fairly and reasonably be said to comprehend within them. Source of power to make law is derived from Entry 54 of the State List II of VIIth Schedule to the Constitution of India. The said entry is `sales and purchases of goods'. It comprehends within it, power to make all ancillary and subsidiary provisions like impugned herein which are intended for preventing evasion of tax. See - Union of India v. A. Sanyasi Rao, (1996) 219 ITR 330 (SC).

##. Undoubtedly, importer of cement is liable to be taxed under Central Sales Tax Act, but the impugned provisions aimed to curb likely evasion of tax in the guise of imports by dealers adopting illicit means or surreptitious practices, cannot be held to be an act of transgression of the fields of Legislation assigned in Entry 54 of State List II to the State legislature. The impugned provisions are regulatory in nature to ensure due imposition and collection of sales tax on goods sold and purchased within the State. They provide machinery for identification of such goods sold and purchased in the State in the garb or cover of import.

##. Section 59AAA and Rule 62AAA are challenged on the ground that cement has been notified and declared as `specified good' along with other goods of not much importance, in inter-State trade only to help manufacturers of cement in the State of Gujarat and to discourage inter-State trade in cement manufactured in other States. Reference is made to the legislative

history and decisions of this Court in J.K.Corporation Ltd. (supra). It is submitted that in violation of Articles 301 and 302 of the Constitution of India, there has been discriminatory treatment to dealers engaged in inter-State trade and commerce in only commodity cement.

##. We have already taken note of the stand of the State of Gujarat that price variation in cement manufactured in Gujarat and outside Gujarat on account of dissimilarity of tax burden was found to be a cause of large scale illicit trade in cement. The State, therefore thought it necessary to enact provisions to check such illicit trade and evasion of tax. The impugned provisions of the Act and Rules impose reasonable restriction in public interest within the meaning of Article 302 of the Constitution of India. The impugned provisions do not directly impede or restrict free flow of Inter-State trade and commerce. They only indirectly restrict trade to regulate collection and to check evasion of tax. They cannot be described as unreasonable restrictions under Article 302 of the Constitution. Restrictions such as those imposed by the impugned provisions requiring importer to give in prescribed Form full information, particulars and declaration of the goods sought to be imported in the state of Gujarat do not directly obstruct free flow of Inter-State trade, commerce and intercourse and hence are unassailable on grounds based on Articles 12, 19 or 301 of the Constitution.

##. Certain provisions which, on experience, have been found, if not impossible but difficult and burdensome of performance in practical situation or realities of trade and business, have fairly been now not insisted upon. On behalf of the State, learned Advocate General very candidly stated that certain objectionable provisions in the Rules and Forms may be allowed to be given a go-by and instead of quashing them, this Court may read them down. Such information and particulars of declaration concerning imports of goods as are to be found and available in the documents of transporter carried with the goods shall not be insisted upon to be supplied by importer as well. Obligation to supply same particulars and information by the importer can be shelved. Similarly, requirements contained in clause (f) of Rule 24B of the Rules of producing evidence or material to satisfy the Registering Authority, before issuance of prescribed Forms in a book, that on earlier transactions, regular books of account have been maintained and payment of tax due on all sales and purchases have been made, shall not be insisted upon by the concerned authority if the dealer has approached for book containing Forms for

the first time. It may apply to second and subsequent transactions of sales and purchases.

##. In view of such oral and written stand taken on behalf to the State for softening the rigor of offending portions of the impugned Rules and Forms, this Court sitting in Full Bench does not consider it necessary to enter into the correctness of the reasonings and conclusions of the Division Bench in its decision in the case of J.K.Corporation Limited (supra). As has been conceded on behalf of the State, more objectionable parts of the impugned Rules and portions of the statutory form can be given a go-by to relieve the importer from the avoidable bottlenecks that might be created on importing specified goods in the course of Inter-State trade and commerce. it has already been noticed that after decision of the Division Bench in J.K.Corporation Limited (supra), the State Legislature introduced Section 59AAA to clothe itself with an express power to make provisions for preventing evasion of tax on imports of specified goods in the course of Inter-State trade and commerce. Such requirement of the impugned Rules and Forms which are found to be impracticable and highly difficult of performance have been agreed to be read down and not insisted upon by the State and its authorities. As regards columns (6), (11) and (12) in Form 45C, on behalf of the State, orally and in writing, it has been stated that importer can make a declaration to the extent he is possessed of such information. In not filling column Nos.(6), (11) and (12) in Form 45C, goods shall neither be detained nor importer shall be penalized. It has also been agreed on behalf of the State and its authorities that particulars and details in respect of column Nos.(6), (9), (11) and (12) can be filled on the basis of the declaration contained in Form 45A which is to be made by the transporter. Importer is required to make a declaration about the particulars of which he possesses knowledge and information.

##. The impugned provisions of the Rules and Forms as read down in the manner sought to be done on behalf of the State, would not offend any of the provisions of the Constitution and are liable to be upheld. They are necessary and are regulatory in nature for preventing evasion of tax.

##. Rule of reading down statutory provision is well recognized rule of interpretation. For avoiding striking down of statute or Rule on curable constitutional or legal vice, this rule of reading down statute or rule to harmonise it with general scheme of the Act and the

Rules, has been resorted to by the Supreme Court in the case of Hyderabad Karnataka Education Society v. Registrar of Societies, (2000)1 SCC 566. In that case, Rule 7A of the Karnataka Societies Registration Act, 1960 providing for automatic cessation of membership of the society for non-payment of membership fee was read down to make it reasonable and sustainable. It was held that before automatic disqualification attached to the member, it was open to the defaulter ordinary member to point out to the society, relevant grounds of defence that membership fee or subscription was not paid or paid late under the circumstances beyond the control of the member. See also the decision in the case of 20th Century Finance Corporation Limited v. State of Maharashtra, (2000)6 SCC 12, in para 38, wherein Explanation to Section 2(10) of the Maharashtra Sales Tax Act, was read down so that it is held as not transgressing the Legislative List. By thus reading down Explanation to Section 2(10) of the said Act, it was held that it would not be applicable to the transactions of transfer of right to use any goods if such deemed sale is (i) an outside sale; (ii) sale in course of the import of the goods into or export of the goods out of the territory of India and (iii) an inter-State sale. So also, in the case of State of Maharashtra v. Ravdeep Singh Sohal, (2000)9 SCC 184, similar resort was made to the rule of interpretation of reading down the Rule in its application to admission rules for medical colleges concerning a students whose parents are in the Army.

##. The challenge to the impugned provisions based on the Constitution, therefore, fails. This Court, however, upholds the impugned provisions contained in Section 59AAA and Rule 62AAA read with Rule 24B(f) by reading them down and holding that clause (f) of Rule 24B is restricted in its application as against importer to only second and subsequent transactions. We also hold that impugned provisions of the Act and Rules are valid because as stated on behalf of the State, columns (6), (11) and (12) in the prescribed Form 45C, as introduced after introduction of Section 59AAA and Rule 62AAA, are not required to be filled by the importer where such information and particulars, as required in the said columns, are made available or can be demanded from the transporter in accordance with prescribed Form 45A which is applicable to the transporter.

##. As a result of the discussion aforesaid and conclusions, the challenge to the Constitutional validity of the impugned provisions of the Act, Rules and Forms fails. The petitions only partly succeed to the extent

of reading down Rule 62AAA(4) read with Rule 24B(f) and particulars to be filled in columns (6), (11) and (12) in prescribed Form 45C. They have to be read in the manner aforesaid in their application to the importers of specified goods. The departmental Circulars dated 12.9.2000 and 11.10.2000 containing instructions to the taxing authorities contrary to our decision rendered herein are hereby quashed. The respondents and their authorities are directed to issue fresh departmental Circulars or executive instructions in accordance with our decision and dispel, in future, any misunderstanding or confusion on the question of requirement of furnishing details and particulars by the importer and transporter. Rule is made absolute in aforesaid terms. In the circumstances, we leave the parties to bear their own costs in these petitions.

(D.M.Dharmadhikari, C.J.)

(A.R.Dave, J.)

(P.B.Majmudar, J.)
(parekh/sunil)